

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER:29930/20

In the matter between:

LIBERTY GROUP LIMITED

APPLICANT

AND

THE FINANCIAL SECTOR

CONDUCT AUTHORITY

RESPONDENT

FILING SHEET

KINDLY TAKE NOTICE THAT the Applicant hereby serves and files the following documents:

1. Supplementary Founding Affidavit by Desray Avril Goldman with annexure.
2. Amended Annexure A.

DATED at JOHANNESBURG on this 3rd day of March 2021.

J. PRETORIUS

SALIJEE GOVENDER VAN DER MERWE INC.

Applicant's Attorneys

C/O HACK, STUPEL & ROSS ATTORNEYS

2nd Floor, Standard Bank Chambers

Church Square, Pretoria

Tel: (012) 325-4185

Email: Julie2@hsr.co.za

Ref: Ms J Pretorius

RF21477

TO:

THE REGISTRAR OF THE ABOVE HONOURABLE COURT

PRETORIA

BY HAND

AND TO:

THE RESPONDENT

THE FINANCIAL SECTOR CONDUCT AUTHORITY

Riverwalk Office Park,

Block B, 41 Matroos Road (Cnr Matroosberg and Garsfontein Roads)

Ashlea Gardens,

Extension 6,

Menlo Park,

Pretoria

Ref: S Rossouw

BY HAND

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SIGN: <i>M. M. M. M.</i>	TIME: 10:28
FINANCIAL SECTOR CONDUCT AUTHORITY	

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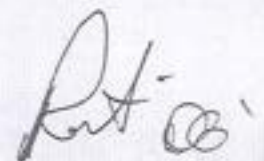
SUPPLEMENTARY FOUNDING AFFIDAVIT

I, the undersigned

DESRAY AVRIL GOLDMAN

do hereby make oath and state:

1. I am an adult employee of Liberty Corporate, a division of Liberty Group Limited, the Applicant in this application. I deposed to the founding affidavit in these proceedings.
2. For the reasons set out in the founding affidavit, I remain authorised to depose to this supplementary affidavit. The facts to which I depose are



to the best of my belief true and correct and are within my personal knowledge.

3. The purpose of this supplementary affidavit is to include, in annexure A to the notice of motion, other pension funds that were omitted and to also deal with the circumstances under which they were deregistered. The notice of motion will be amended accordingly to also refer to pension funds mentioned here below.
4. The reason why these pension funds could not be included in the founding affidavit was because at the time that I deposed to the founding affidavit, information pertaining to these funds was still being verified and Liberty's Fund Rehabilitation Team was not yet in a position to verify the circumstances under which those pension funds were deregistered. Liberty's Fund Rehabilitation Team was still not in a position to confirm whether or not these pension funds had assets and if so, the value of those assets. As stated in the Founding Affidavit, Mr Jacobus Albertus Kok is one of the senior members of the Fund Rehabilitation Team that is directly involved with the Fund Rehabilitation project and will depose to a confirmatory affidavit in support of these facts. A copy of the Confirmatory Affidavit is annexed hereto as annexure "SA1".
5. The Fund Rehabilitation Team has now completed the investigation and is able to confirm that the pension funds mentioned under categories "A" and "B" below had not been properly deregistered by the



FSCA's predecessor (The Registrar of Pension Funds) as they still had assets and liabilities.

6. Accordingly, Liberty (the Applicant) respectfully prays that the order directing the FSCA to cancel the deregistration of the pension funds mentioned in the founding affidavit should also include the order directing the FSCA to cancel the deregistration of the pension funds set out below.
7. The legal grounds for the orders sought, including the prayer for condonation in terms of section 9 of PAJA, remain the same. In other words, the same legal grounds relied upon by Liberty in the founding affidavit apply with equal force to this supplementary founding affidavit.

AFFECTED FUND CATEGORIES

Category "A" Affected Funds

8. Category "A" Affected Funds are those retirement funds that have always been administered by the Applicant.
9. The Applicant applied for and procured the cancellation of the registrations of the Category "A" Affected Funds in terms of section 27(1)(a) or section 28(15) of the Act, as the case may be, because according to those of the Applicant's records which the relevant personnel accessed at the relevant time, the Category "A" Affected Funds did not have any members, assets or liabilities.

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10. However, it has since transpired that this information was incorrect and that the registration of those funds were cancelled erroneously because the Registrar had received and relied on incorrect information and consequently made an error of law when it was decided to cancel the registration of the Category "A" Affected Funds.

Category "B" Affected Funds

11. Category "B" Affected Funds are those funds that were previously administered by Investec Employee Benefits Limited ("Investec"), Fedlife Holdings Ltd ("Fedlife"), Capital Alliance Holdings Limited ("Capital Alliance"), and The Standard General Insurance Company Limited ("Standard General"). During the period 2002 – 2005 the Applicant acquired administration businesses of the above entities together with all the rights and obligations pertaining to those businesses.
12. The Applicant assumed the administration of the Category "B" Affected Funds when it acquired the administration businesses of the above entities.
13. During 2003, when the Applicant acquired the benefits administration business of Investec Employee Benefits and began to administer the inherited client retirement funds during or about September 2003, the Applicant continued to administer those retirement funds on the administration system which had been used for the purpose of Investec until then.

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14. The retirement funds whose administration the Applicant had taken from Investec were only migrated onto the Applicant's existing administration system a few years after it had purchased the Investec administration business. The Fedlife acquisition was simultaneous with the Investec acquisition as the two companies were part of the same group. The Applicant acquired the administration business of Capital Alliance (and thus also "inherited" Standard General which Capital Alliance purchased during or about 1999) during or about June 2005.
15. In the case of the acquired businesses, their client records were only "migrated" (transcribed) onto the Applicant's benefits administration system sometime after the acquisitions.
16. The data which the Applicant loaded on its administration system in respect of several other/of the inherited client retirement funds reflected that those retirement funds were already dormant funds at the time they were taken over and did not have any in-service members or assets and liabilities.
17. However, the Applicant's investigations as part of the post 2013 audit has revealed that the Category "B" Affected Funds do in fact have assets and liabilities.
18. This must mean that they had had not "ceased to exist" despite the Registrar having been previously informed by the Applicant during 2008 – 2013 that they have ceased to exist, and their registrations should be cancelled.

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19. As the Category "B" Affected Funds had not "ceased to exist," the registration of those funds was cancelled erroneously because the Registrar relied on incorrect information and consequently made an error of law when the decision was made to cancel them.

Category "C" Affected Funds

20. Category "C" Affected Funds are pension funds (transferor funds) that were previously dormant because all their assets were transferred to other pension funds (transferee funds). When the transferee funds returned the assets to the transferor funds, the transferor funds suddenly had assets and were no longer dormant as such.
21. In respect of each of the category "C" Affected Funds, Applicant had during the period 2008 – 2013 nominated an employee of the Applicant to be appointed as an "authorised representative/person" or "section 26(2) trustee", or in some instances, as a liquidator, to procure the cancellation of the funds because the Affected Funds did not have any boards in place.
22. As stated above, prior to the cancellation of each Category "C" Affected Fund's registration, the assets and liabilities of that fund had been transferred to either the Liberty Unclaimed Benefit Preserver Provident Fund (registration number 12/8/37955) ("the Unclaimed Provident Fund") or the Liberty Unclaimed Benefit Preserver Pension Fund (registration number 12/8/37956) ("the Unclaimed Pension Fund") (collectively "the Unclaimed Funds") in accordance with section 14(8) of the Act.



23. To the Applicant's knowledge, all of the Category "C" Affected Funds had no members, assets or liabilities at the time that the Registrar cancelled their registrations.
24. Following the cancellation by the Registrar of the Category "C" Affected Funds' registration, the relevant Unclaimed Fund transferred some of the assets which it had received from each of the Category "C" Affected Funds back to the Applicant for the account of the relevant Category "C" Affected Fund.
25. According to the Applicant's records, the Unclaimed Funds had purported to transfer some of the assets they received back to the Affected Funds because it was discovered after the transfer to the Unclaimed Funds, that the rules of the Unclaimed Funds did not permit them to accept the transfer of unclaimed benefits in respect of former members of the Affected Funds who were already deceased prior to the transfer, to the Unclaimed Funds.
26. Accordingly, as at the date of this application each of the Category "C" Affected Funds has assets, alternatively the Applicant holds moneys for their benefit.

PARTICULARS OF THE AFFECTED FUNDS

Category "A" Affected Funds:

27. Henhouse Provident Fund: PF 12/8/21509.



- 27.1 The actual date of cancellation of this fund is not known. The FSCA website indicates that the registration of this fund was cancelled on 3 April 2013 under Section 27(1) of the Act. The Applicant has requested the letter of cancellation from the FSCA.
- 27.2 As at 1 November 2020, the value of the assets of this fund held by the Applicant was R 567,388.
- 27.3 This amount relates to surplus benefits, apportioned in terms of an approved surplus apportionment scheme, which were not paid to members prior to the deregistration of the fund.
28. Feedback Electronics Provident Fund: PF 12/8/24659.
- 28.1 The fund was deregistered on 20 July 2010 in terms of section 27(1) of the Act.
- 28.2 As at 1 November 2020, the value of the assets of this fund held by the Applicant was R490,829.
- 28.3 This amount relates to a reserve account which was not apportioned prior to the deregistration of the fund
29. Airshield Provident Fund: PF 12/8/29760.
- 29.1 The fund was deregistered on 20 December 2012 in terms of section 27(1) of the Act.

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- 29.2 As at 1 November 2020, the value of the assets of this fund held by the Applicant was R663,440.
- 29.3 This amount relates to a reserve account which was not apportioned prior to the deregistration of the fund

Category "B" Affected Funds

30. Sunpak Executive Provident Fund: 12/8/27252.

- 30.1 The fund was deregistered on 28 October 1998 in terms of section 27(1) of the Act.
- 30.2 As at 1 November 2020, the value of the assets of this fund held by the Applicant was R 3 996 919.
- 30.3 This amount represents unpaid benefits in respect of one member as well as surplus which was not distributed prior to the deregistration of the fund.

31. Sunpak Pension Fund: 12/8/19051.

- 31.1 The fund was deregistered on 28 October 1998 in terms of section 27(1) of the Act.
- 31.2 As at 1 November 2020, the value of the assets of this fund held by the Applicant was R 513 134.
- 31.3 This amount represents unpaid benefits in respect of two members as well as surplus which was not distributed prior to the deregistration of the fund.

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32. Hi-Spirit Pension Fund: PF 12/8/20876.

32.1 The actual date of cancellation of this fund is not known. The FSCA website indicates that the registration of this fund was cancelled on 20 December 2012 under Section 27(1) of the Act. The Applicant has requested the letter of cancellation from the FSCA.

32.2 This is one of the pension funds that were initially administered by Fedsure and subsequently Investec Employee Benefits.

32.3 As at 1 November 2020, the value of the assets of this fund held by the Applicant was R 1 093 412.

32.4 This amount represents surplus which was not distributed prior to the deregistration of the fund.

33. Agip Lubricants Pension Fund: PF 12/8/14728.

33.1 The fund was deregistered on 28 March 2012 in terms of section 28(15) of the Act.

33.2 The fund was previously administered by Capital Alliance.

33.3 As at 1 November 2020, the value of the assets belonging to this fund was R 936 969.

33.4 This amount represents a liquidation benefits which was not paid to members prior to deregistration of the fund.

34. Copy Link (Pty) Ltd Retirement Fund: PF 12/8/26456.

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- 34.1 The actual date of cancellation of this fund is not known. The FSCA website indicates that the registration of this fund was cancelled on 17 April 2010 under Section 28(15) of the Act. The Applicant has requested the letter of cancellation from the FSCA.
- 34.2 This is one of the retirement funds that were initially administered by Fedsure and subsequently Investec Employee Benefits.
- 34.3 As at 1 November 2020, the value of the assets of this fund was R 824 184.
- 34.4 This represents an investment account which was not included in the liquidation of the fund.
35. Eugene Marais Hospital Provident Fund: PF 12/8/17913.
- 35.1 The fund was deregistered on 24 August 2012 in terms of section 27(1) of the Act.
- 35.2 This is one of the retirement funds that were initially administered by Fedsure and subsequently Investec Employee Benefits.
- 35.3 As at 1 November 2020 the value of the assets belonging to this fund was R592 620.
- 35.4 This represents the value of the benefit relating to one member who was not paid prior to the deregistration of the fund.

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36. Longspan Gridline Pension Fund: PF 12/8/14759.

36.1 The actual date of cancellation of this fund is not known. The FSCA website indicates that the registration of this fund was cancelled on 12 August 1988 under Section 27(1) of the Act. The Applicant has requested the letter of cancellation from the FSCA.

36.2 This is one of the pension funds that were administered by Fedsure and subsequently Investec Employee Benefits.

36.3 As at 1 November 2020 the value of the assets belonging to this fund was R500 718.

36.4 This represents the value of the paid-up benefit relating to one member which was not paid prior to the deregistration of the fund.

37. Vac Cent Provident Fund: PF 12/8/28139.

37.1 The fund was deregistered on 2 January 2013 in terms of section 27(1) of the Act.

37.2 This is one of the pension funds that were initially administered by Standard General and subsequently Capital Alliance.

37.3 As at 31 October 2020, the value of the assets belonging to this fund was R881,478.

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- 37.4 This amount represents the assets relating to paid-up benefits of the fund that were not paid to members prior to deregistration of the fund
38. Canine Security Provident and Group Life Assurance Scheme: PF 12/8/26919.
- 38.1 The fund was deregistered in terms of section 27(1) of the Act on 17 May 2004.
- 38.2 This is one of the pension funds that were initially administered by Standard General and subsequently Capital Alliance.
- 38.3 As at 31 October 2020, the value of the assets belonging to this fund was R852,718.
- 38.4 This amount represents the assets related to an underpayment made in on a transfer out of the fund.
39. Freton Engineering (Pty) Ltd Pension Fund: PF 12/8/10099.
- 39.1 The actual date of cancellation of this fund is not known. The FSCA website indicates that the registration of this fund was cancelled on 24 February 2003 under Section 27(1) of the Act. The Applicant has requested the letter of cancellation from the FSCA.
- 39.2 This is one of the pension funds that were initially administered by Standard General and subsequently Capital Alliance.

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39.3 As at 31 October 2020, the value of the assets of the fund was R1,165,502.

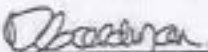
39.4 This amount represents an underpayment of member benefits which was not corrected prior to the deregistration of the fund.

Category "C" Affected Funds

40. There are no category C funds in this supplementary affidavit.

CONCLUSION

41. In all the circumstances, the Applicant respectfully prays for an order in terms of the notice of motion, as amended, to which this affidavit is attached.



DEPONENT

SIGNED AND SWORN BEFORE ME AT JOHANNESBURG ON THIS 2nd DAY OF March 2021, THE DEPONENT HAVING ACKNOWLEDGED THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION IN TAKING THE PRESCRIBED OATH AND CONSIDERS THE OATH TO BE BINDING ON HER CONSCIENCE.

COMMISSIONER OF OATHS

FULL NAMES: _____

DESIGNATION: _____



COMMISSIONER OF OATHS
Wynand Rautenbach (A.I.)
Practising Attorney - R.S.A
220 Louis Trichardt Boulevard
Vanderbijlpark
Cell: 082 828 6554

ADDRESS: _____

②

"SAI"

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER:29930/20

In the matter between:

LIBERTY GROUP LIMITED

APPLICANT

AND

THE FINANCIAL SECTOR
CONDUCT AUTHORITY

RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned,

JACOBUS ALBERTUS KOK

do hereby make oath and state as follows:

1. I am an adult male and contracted to the Applicant, Liberty Group Limited, in the capacity of Head of Trustee Liaison - Terminations.

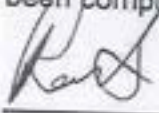


- 2. I am a senior member of the Fund Rehabilitation Team. I have overall responsibility for trustee liaison, and I am also closely involved in fund investigations and sign-off.
- 3. I hold a Bachelor of Science degree in actuarial science, which I obtained in 1995, at the University of Johannesburg. I have also been a Fellow of the Actuarial Society of South Africa since 2002 and hold an Executive Master of Business Administration degree which I obtained in 2007 from the London Business School.
- 3. The facts contained herein are within my personal knowledge, save where otherwise stated.
- 4. I have read the Supplementary Founding Affidavit of Desray Avril Goldman and confirm the contents thereof as being both true and correct.



 DEPONENT

I certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at Nidward on this 2 day of March 2021, the regulations contained in Government Gazette No R1258 dated the 21st of July 1972 as amended by Government Notice no 1648 dated the 19th of August 1977 having been complied with.



 COMMISSIONER OF OATHS



FULL NAMES:
DESIGNATION:
ADDRESS:



COMMISSIONER OF OATHS

Wynand Rautenbach (A.I)
Practising Attorney - R.S.A
220 Louis Trichardt Boulevard
Vanderbijpark
Cell: 082 828 8554



ANNEXURE A

Category "A" Affected Funds

1. Young-Davis Incorporated Provident Fund: PF: 12/8/29980
2. S & S Retreaders Provident Fund: PF 12/8/13536
3. Agrichicks Pension Fund: PF 12/8/31739
4. Henhouse Provident Fund: PF 12/8/21509
5. Feedback Electronics Provident Fund: PF 12/8/24659
6. Airshield Holdings Provident Fund: PF 12/8/29760

Category "B" Affected Funds

7. Matco Pension Scheme: PF 12/8/12709
8. Tower Battery 1971 Pension Fund: PF 12/8/12862
9. Nashua Voluntary Fund: PF 12/8/16477
10. Orange Grove Farms Pension Fund: PF 12/8/15982
11. Mellor Pumps Provident Fund: PF 12/8/29829
12. Crossmoor Carrier CC Provident Fund: PF 12/8/28409
13. Forbes Brothers Provident Fund: PF 12/8/18378
14. Sunpak Executive Provident Fund: PF 12/8/27252
15. Sunpak Pension Fund: PF 12/8/19051
16. Hi-Spirit Pension Fund: PF 12/8/20876
17. Agip Lubricants Pension Fund: PF 12/8/14728
18. Copy Link (Pty) Ltd Retirement Fund: PF 12/8/26456
19. Eugene Marais Hospital Provident Fund: PF 12/8/17913
20. Longspan Gridline Pension Fund: PF 12/8/15082
21. Vac Cent Provident Fund: PF 12/8/28139
22. Canine Security Provident Fund and Group Life Assurance Scheme: PF 12/8/26919
23. Freton Engineering (Pty) Ltd Pension Fund: PF 12/8/10099

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LIBERTY GROUP LIMITED / THE FINANCIAL SECTOR CONDUCT AUTHORITY

00 Followed and Expired Bonds

01 COMPANY ACCOUNTS

02 October 2020 02:11:00:00

03 Data Application Form & Notice of Set Down

04 Filing Sheet

05 Supplementary Filing Affidavit

06 Filing Sheet (1) March 2020

07 01-01-2021

08 Affidavit Compliance with the Consolidated Directive of 18 September 2020

CASE NUMBER: 29930/20

In the matter between:

LIBERTY GROUP LIMITED APPLICANT

AND

THE FINANCIAL SECTOR CONDUCT AUTHORITY RESPONDENT

FILING SHEET

KINDLY TAKE NOTICE THAT the Applicant hereby serves and files the following documents:

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